

*Example 1.* In Example 1 to paragraph (a) of this section, Operator X provides the required information to Operator Y in a timely fashion. However, Operator Y fails to provide an accessible bus or equivalent service to the passenger at Point B as the rules require. Operator Y is responsible for compensating the passenger as provided in § 37.199.

*Example 2.* Operator X provides the required information to Operator Y in a timely fashion. However, the rules require Operator Y to provide an accessible bus on 48 hours' advance notice (*i.e.*, as a matter of interim service under § 37.193(a) or service by a small mixed-service operator under § 37.191), and the passenger has purchased the ticket or made the reservation for the interline trip only 8 hours before Operator Y's bus leaves from Point B to go to Point C. In this situation, Operator Y is not responsible for providing an accessible bus to the passenger at Point B, any more than that it would be had the passenger directly contacted Operator Y to travel from Point B to Point C.

(c) All fixed-route operators involved in interline service shall ensure that they have the capacity to receive communications at all times concerning interline service for passengers with disabilities. The following examples illustrate the provisions of this paragraph (c):

*Example 1.* Operator Y's office is staffed only during normal weekday business hours. Operator Y must have a means of receiving communications from carriers with which it interlines (*e.g.*, telephone answering machine, fax, computer) when no one is in the office.

*Example 2.* Operator Y has the responsibility to monitor its communications devices at reasonable intervals to ensure that it can act promptly on the basis of messages received. If Operator Y receives a message from Operator X on its answering machine on Friday night, notifying Y of the need for an accessible bus on Monday morning, it has the responsibility of making sure that the accessible bus is there on Monday morning. Operator Y is not excused from its obligation because no one checked the answering machine over the weekend.

#### **§ 37.189 Service requirement for OTRB demand-responsive systems.**

(a) This section applies to private entities primarily in the business of transporting people, whose operations affect commerce, and that provide demand-responsive OTRB service. Except as needed to meet the other requirements of this section, these entities are not required to purchase or lease acces-

sible buses in connection with providing demand-responsive service.

(b) Demand-responsive operators shall ensure that, beginning one year from the date on which the requirements of this subpart begin to apply to the entity, any individual with a disability who requests service in an accessible OTRB receives such service. This requirement applies to both large and small operators.

(c) The operator may require up to 48 hours' advance notice to provide this service.

(d) If the individual with a disability does not provide the advance notice the operator requires under paragraph (a) of this section, the operator shall nevertheless provide the service if it can do so by making a reasonable effort.

(e) To meet this requirement, an operator is not required to fundamentally alter its normal reservation policies or to displace another passenger who has reserved a seat on the bus. The following examples illustrate the provisions of this paragraph (e):

*Example 1.* A tour bus operator requires all passengers to reserve space on the bus three months before the trip date. This requirement applies to passengers with disabilities on the same basis as other passengers. Consequently, an individual passenger who is a wheelchair user would have to request an accessible bus at the time he or she made his reservation, at least three months before the trip date. If the individual passenger with a disability makes a request for space on the trip and an accessible OTRB 48 hours before the trip date, the operator could refuse the request because all passengers were required to make reservations three months before the trip date.

*Example 2.* A group makes a reservation to charter a bus for a trip four weeks in advance. A week before the trip date, the group discovers that someone who signed up for the trip is a wheelchair user who needs an accessible bus, or someone who later buys a seat in the block of seats the group has reserved needs an accessible bus. A group representative or the passenger with a disability informs the bus company of this need more than 48 hours before the trip date. The bus company must provide an accessible bus.

*Example 3.* While the operator's normal deadline for reserving space on a charter or tour trip has passed, a number of seats for a trip are unfilled. The operator permits members of the public to make late reservations for the unfilled seats. If a passenger with a disability calls 48 hours before the trip is scheduled to leave and requests a seat and

## § 37.191

the provision of an accessible OTRB, the operator must meet this request, as long as it does not displace another passenger with a reservation.

*Example 4.* A tour bus trip is nearly sold out three weeks in advance of the trip date. A passenger with a disability calls 48 hours before the trip is scheduled to leave and requests a seat and the provision of an accessible OTRB. The operator need not meet this request if it will have the effect of displacing a passenger with an existing reservation. If other passengers would not be displaced, the operator must meet this request.

### § 37.191 Special provision for small mixed-service operators.

(a) For purposes of this section, a small mixed-service operator is a small operator that provides both fixed-route and demand-responsive service and does not use more than 25 percent of its buses for fixed-route service.

(b) An operator meeting the criteria of paragraph (a) of this section may conduct all its trips, including fixed-route trips, on an advance-reservation basis as provided for demand-responsive trips in § 37.189. Such an operator is not required to comply with the accessible bus acquisition/equivalent service obligations of § 37.183(b).

### § 37.193 Interim service requirements.

(a) Until 100 percent of the fleet of a large or small operator uses to provide fixed-route service is composed of accessible OTRBs, the operator shall meet the following interim service requirements:

(1) Beginning one year from the date on which the requirements of this subpart begin to apply to the operator, it shall ensure that any individual with a disability that requests service in an accessible OTRB receives such service.

(i) The operator may require up to 48 hours' advance notice to provide this service.

(ii) If the individual with a disability does not provide the advance notice the operator requires, the operator shall nevertheless provide the service if it can do so by making a reasonable effort.

(iii) If the trip on which the person with a disability wishes to travel is already provided by an accessible bus, the operator has met this requirement.

(2) Interim service under this paragraph (a) is not required to be provided

## 49 CFR Subtitle A (10–1–13 Edition)

by a small operator who is providing equivalent service to its fixed-route service as provided in § 37.183(b)(2).

(b) Some small fixed-route operators may never have a fleet 100 percent of which consists of accessible buses (e.g., a small fixed-route operator who exclusively or primarily purchases or leases used buses). Such an operator must continue to comply with the requirements of this section with respect to any service that is not provided entirely with accessible buses.

(c) [Reserved]

[56 FR 45621, Sept. 6, 1991, as amended at 76 FR 57936, Sept. 19, 2011]

### § 37.195 Purchase or lease of OTRBs by private entities not primarily in the business of transporting people.

This section applies to all purchases or leases of new vehicles by private entities which are not primarily engaged in the business of transporting people, with respect to buses delivered to them on or after the date on which this subpart begins to apply to them.

(a) *Fixed-route systems.* If the entity operates a fixed-route system and purchases or leases an OTRB for or in contemplation of use on the system, it shall meet the requirements of § 37.183 (a) or (b), as applicable.

(b) *Demand-responsive systems.* The requirements of § 37.189 apply to demand-responsive systems operated by private entities not primarily in the business of transporting people. If such an entity operates a demand-responsive system, and purchases or leases an OTRB for or in contemplation of use on the system, it is not required to purchase or lease an accessible bus except as needed to meet the requirements of § 37.189.

### § 37.197 Remanufactured OTRBs.

(a) This section applies to any private entity operating OTRBs that takes one of the following actions:

(1) On or after the date on which this subpart applies to the entity, it remanufactures an OTRB so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases an OTRB which has been remanufactured so as to extend its useful life for five years